

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

UNITED STATES OF AMERICA

V.

ROSS MCMORRIS III

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CRIMINAL No. 6:04cr74-11

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

On December 16, 2008, the Court conducted a hearing to consider the United States' petition to revoke the supervised release of Defendant Ross McMorris III. The United States was represented by Allen Hurst, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk, Assistance Federal Public Defender.

Defendant originally pleaded guilty to the offense of Possession with Intent to Distribute and Distribution of Cocaine Base, a Class C felony. The offense carried a statutory maximum imprisonment term of twenty (20) years. The United States Sentencing Guideline range for this violation based on a total offense level of fifteen (15) and a criminal history category of I, was eighteen (18) to twenty-four (24) months. On April 19, 2005 U.S. District Judge Michael H. Schneider sentenced Defendant to twenty (20) months imprisonment, followed by three (3) years of supervised release, subject to the standard conditions of release, plus special conditions including financial disclosure and drug aftercare.

On April 14, 2006 Defendant completed his term of imprisonment and began the three year term of supervised release. Under the terms of supervised release, Defendant was prohibited, in relevant part, from 1) committing another federal, state, or local crime and 2) unlawfully possessing or using a controlled substance. In its petition, the government alleges that Defendant violated these

conditions. On July 21, 2007 Defendant submitted a urine specimen pursuant to his mandatory drug testing which tested positive for marijuana. Additionally, on October 8, 2008 while still under supervised release, Defendant was convicted in the Third Judicial District Court of Anderson County, Texas, of the offense of Possession of a Controlled Substance with Intent to Deliver—more than four (4) grams but less than two hundred (200) grams of cocaine. Defendant was also found guilty of the offense of Possession of Marijuana—four (4) ounces to five (5) pounds.

If the Court finds by a preponderance of the evidence that Defendant committed this violation, a statutory sentence of no more than two years of imprisonment may be imposed. 18 U.S.C. § 3583(e)(3); 18 U.S.C. § 3583(g)(1). Section 7B1.1(a) of the Sentencing Guidelines indicates that if the Court finds by a preponderance of the evidence that Defendant violated conditions of supervision by committing the offense of Possession of a Controlled Substance with Intent to Deliver—more than four (4) grams but less than two hundred (200) grams of cocaine—Defendant will be guilty of committing a Grade A violation, for which the Court shall revoke Defendant's term of supervised release in favor of a term of imprisonment. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of I, the Guideline imprisonment range for a Grade A violation is twelve (12) to eighteen (18) months. U.S.S.G. § 7B1.4(a).

Section 7B1.1(a) of the Sentencing Guidelines indicates that if the Court finds by a preponderance of the evidence that Defendant violated conditions of supervision by using marijuana on or about July 21, 2007, Defendant will be guilty of committing a Grade C violation, for which the Court may either revoke supervised release or extend the term of supervised release and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal

history category of I, the Guideline imprisonment range for a Grade C violation is three (3) to nine (9) months. U.S.S.G. § 7B1.4(a).

At the hearing, the parties indicated they had come to an agreement to resolve the petition whereby Defendant would plead true to the second violation. Further, the parties agreed that Defendant should be sentenced to nine (9) months.

Pursuant to the Sentencing Reform Act of 1984 and the agreement of the parties, the Court **RECOMMENDS** that Defendant Ross McMorris III be committed to the custody of the Bureau of Prisons for a term of imprisonment of nine months with no supervised release to follow. The Court further **RECOMMENDS** that Defendant be imprisoned at the Seagoville facility. The parties have waived their right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to District Judge Michael H. Schneider for adoption immediately upon issuance.

So ORDERED and SIGNED this 17th day of December, 2008.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE